

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In Re:)	MPC 15-0203	MPC 110-0803
)	MPC 208-1003	MPC 163-0803
)	MPC 148-0803	MPC 126-0803
)	MPC 106-0803	MPC 209-1003
David S. Chase)	MPC 140-0803	MPC 89-0703
)	MPC 122-0803	MPC 90-0703
Respondent)		MPC 87-0703

SUPERCEDING SPECIFICATION OF CHARGES

Now Comes the State of Vermont, by and through William Sorrell, Attorney General, and undersigned counsel, and avers the following:

JURISDICTION

1. The Vermont Medical Practice Board (hereinafter "Board") has jurisdiction over this matter as David S. Chase (hereinafter "Respondent") currently holds a suspended license to practice medicine in the State of Vermont, number 042-0003416.

**I. ALLEGATIONS BASED ON PATIENTS' COMPLAINTS AND CHARGES
OF UNPROFESSIONAL CONDUCT RELATED THERETO**

**Complaint of Helene Nordstrom (MPC15-0203) and Charges of
Unprofessional Conduct related thereto**

2. On January 31, 2003, Helene Nordstrom (hereinafter "Complainant") filed a complaint against Respondent.
3. According to the Complainant, she saw Respondent on January 17, 2003 for blurry vision and headaches from eye strain.

4. Respondent examined Complainant while her eyes were dilated and diagnosed Complainant with dense nuclear cortical cataracts.
5. Respondent recommended to Complainant that she have cataract surgery and informed Complainant that she did not need to obtain a second opinion.
6. In Complainant's records Respondent recorded that he gave Complainant a second opinion.
7. Respondent scheduled a pre-operative visit for Complainant for January 20, 2003, which Complainant subsequently cancelled.
8. Upon information and belief, Respondent falsified Complainant's results to support his recommendation for cataract surgery.
9. On January 23, 2003 Complainant saw Doctors Eriksson and Reid (optometrists) at their offices in Essex Junction, Vermont. Both optometrists examined Complainant and informed her that they were unable to find anything that warranted surgery.
10. Complainant underwent an independent evaluation on June 30, 2003 with Dr. Patrick J. Morhun, an ophthalmologist located in Lebanon, New Hampshire.
11. Without knowledge of the specific complaint against Respondent, Dr. Morhun concluded that Complainant's corrected vision was 20/15 right eye and 20/15 left eye. Dr. Morhun states that these results are better than 20/20 vision, which is usually considered "perfect vision." Dr. Morhun found no evidence of cataract formation.

12. Dr. Morhun then reviewed Respondent's records of Complainant so as to provide an opinion as to whether or not Respondent's recommendation for cataract surgery met the standard of care.
13. Dr. Morhun stated that even offering cataract surgery to Complainant "falls below the standard of care in the face of the total lack of cataract formation."
14. Dr. Morhun stated that the "standard of care would be to indicate the patient's best spectacle corrected visual acuity somewhere in the chart." Dr. Morhun notes that Respondent's determination in the Complainant's initial eye examination that Patient A' vision was 20/50 in each eye would be interpreted as Patient A's best spectacle corrected vision. However, in Dr. Morhun's examination of Complainant, her visual acuity with glasses was 20/15 in each eye. Dr. Morhun "cannot explain why [Patient A] was not able to see better" on the day Respondent examined Complainant and stated he is "very concerned about the inconsistency."
15. Dr. Morhun also stated that the "first alternative to operating on someone would be prescribing spectacle correction." Dr. Morhun notes that the record does not indicate spectacle correction was discussed and does not indicate any evidence of testing for a possible change in prescription for the Complainant's glasses.
16. According to Dr. Morhun, Respondent's plan for Complainant was to perform cataract surgery on the left eye and then consider cataract surgery for the right eye "if and when [Complainant] was ready." Because

the first surgery would have created a power difference between the vision in each eye, a second operation would have been required within one-two weeks. Respondent was, according to Dr. Morhun, "planning on two operations when none is indicated."

17. Dr. Morhun notes that Respondent stated in his response to Complainant's complaint that a second opinion might be that she did not require surgery because she could see well with glasses.
18. According to Dr. Morhun, if Complainant could see well with glasses then she does not require surgery and the risks inherent in surgery. The risks in Complainant's case would be "infection, bleeding, loss of vision, and retinal detachment (which may be as high as 5% per eye . . .)."
19. Dr. Morhun concluded that "the examination and recommendations of [Respondent] for [Complainant] on January 17, 2003 fall below the standard of care expected for an ophthalmic surgeon."

Charges of Unprofessional Conduct based on complaint of Helene Nordstrom

Count I-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

20. The State hereby incorporates the allegations in Paragraphs 1-19, above.
21. Respondent's recommendation to Complainant that she undergo cataract surgery when there was no evidence of cataract formation constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count II-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

22. The State hereby incorporates the allegations in Paragraphs 1-21, above.
23. Respondent's direction to Complainant that she not seek a second opinion constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count III-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

24. The State hereby incorporates the allegations in Paragraphs 1-23, above.
25. Respondent's falsification of Complaint's records to support his recommendation to Complainant for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count IV-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

26. The State hereby incorporates the allegations in Paragraphs 1-25, above.
27. Respondent's testing of Complainant's vision after dilation in order to support Respondent's recommendation for cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count V- Willful Misrepresentation in Treatment Under 26 V.S.A.
§1354(a)(14)**

28. The State hereby incorporates the allegations in Paragraphs 1-27, above.

29. Respondent's recommendation to Complainant that she undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count VI- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

30. The State hereby incorporates the allegations in Paragraphs 1-29, above.

31. Respondent's falsification of Complainant's records to support his recommendation to Complainant for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

**Count VII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A.
§1398.**

32. The State hereby incorporates the allegations in Paragraphs 1-31, above.

33. Respondent's recommendation to Complainant that she undergo cataract surgery when there was no evidence of cataract formation constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

**Count VIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A.
§1398.**

34. The State hereby incorporates the allegations in Paragraphs 1-33, above.

35. Respondent's direction to Complainant that she not seek a second opinion constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count IX-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

36. The State hereby incorporates the allegations in Paragraphs 1-35, above.

37. Respondent's falsification of Complainant's records to support his recommendation to Complainant for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count X-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

38. The State hereby incorporates the allegations in Paragraphs 1-37, above.

39. Respondent's testing of Complainant's vision after dilation in order to support Respondent's recommendation for cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XI-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

40. The State hereby incorporates the allegations in Paragraphs 1-39, above.

41. Respondent's treatment of Complainant on January 17, 2003 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Count XII-Failure To Practice Competently Under 26 V.S.A. §1354(b)

42. The State hereby incorporates the allegations in Paragraphs 1-41, above.

43. Respondent's treatment of Complainant on January 17, 2003 exhibits both

(a) a performance of unsafe or unacceptable patient care and (b) a failure to conform to the essential standards of acceptable and prevailing standards and thereby constitutes a failure to practice competently under 26 V.S.A. §1354(b).

Complaint of Patient #2 (MPC208-1003) and Charges of Unprofessional Conduct related thereto

44. Patient #2, aged 64, saw Respondent on June 11, 2003.

45. Respondent's notes for patient #2 on June 11, 2003 record a visual acuity of 20/100 in each eye.

46. Respondent's notes for Patient #2 on June 11, 2003 also indicate that a Contrast Sensitivity Test ("CST") with Brightness Acuity Test ("BAT") was performed on Patient #2.

47. The results of the CST with BAT were also 20/100 in each eye.

48. Respondent's notes for Patient #2 indicate that the CST with BAT was done with "best VA." VA is notation for visual acuity.

49. According to Patient #2, Respondent had given performed the CST with BAT after her eyes were dilated.

50. The entry in Patient #2's records of visual acuity of 20/100 in both eyes is false. The visual acuity of 20/100 in both eyes for Patient #2 was not a result of a Snellen Test, the common test for measuring visual acuity, but

instead was improperly based on the results of the CST with BAT. On July 25, 2003, Patient #2 was examined by Dr. Alan E. Irwin, an ophthalmologist at University Health Center, Burlington, Vermont. Dr. Irwin examined and tested and found that Patient #2 had 20-20 +2 in the left eye. According to Dr. Irwin this means that Patient #2 has 20-20 vision in that eye plus she can read 2 letters on the 20-15 line.

51. Respondent's records for Patient #2 on June 11, 2003 indicate that Respondent diagnosed Patient #2 with dense central nuclear cortical cataracts in each eye and that Respondent informed Patient #2 of this diagnosis.
52. The diagnosis entered in Patient #2's record of dense nuclear cortical cataracts in both eyes is false. After his examination of Patient #2 on July 25, 2003, Dr. Irwin concluded that there was only "a bare trace of cortical lens opacity" in Patient #2's left eye.
53. Respondent's records for Patient #2 on June 11, 2003 indicate that Patient #2 was given second opinion.
54. The entry in Patient #2's records that a second opinion was given is false. Patient #2 was not given a second opinion from another physician regarding cataract surgery.
55. According to Respondent's records for Patient #2, the treatment plan for Patient #2 as of June 11, 2003 was cataract extraction for the right eye and cataract extraction for the left eye "if and when ready."

56. Respondent's records for Patient #2 indicate of June 11, 2003 indicate that phaco cataract extractions were scheduled to be performed on the right eye on July 15, 2003 and on the left eye on July 22, 2003.
57. On July 15, 2003 Respondent performed phaco cataract extraction of the right eye of Patient #2.
58. The phaco cataract extraction performed on Patient #2 on July 15, 2003 was unnecessary. On information and belief, cataracts develop bilaterally. The condition of Patient #2's right eye prior to surgery was the same as the left eye examined by Dr. Irwin, i.e. a bare trace of cortical lens opacity.
59. On July 21, 2003, the day before Patient #2's scheduled operation for the left eye, Respondent was served with the State's motion for summary suspension and notice of hearing for 1:00 p.m. that same day.
60. On July 21, 2003 Respondent's office called Patient #2 and attempted to change her operation from July 22, 2003 to July 21, 2003. Patient #2 refused.
61. Dr. Irwin stated that Patient #2 was very lucky not to have surgery on the remaining eye.

Charges of Unprofessional Conduct based on complaint of Patient #2

**Count XIII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

62. The State hereby incorporates the allegations in Paragraphs 44-61, above.

63. Respondent's recommendation to Patient #2 that she undergo cataract surgery when there was only a bare trace of cataract formation constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

**Count XIV-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

64. The State hereby incorporates the allegations in Paragraphs 44-63, above.

65. The unnecessary cataract extraction performed on Patient #2's right eye constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count XV-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

66. The State hereby incorporates the allegations in Paragraphs 44-65, above.

67. Respondent's falsification of Patient #2's records to support his recommendation to Patient #2 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count XVI-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

68. The State hereby incorporates the allegations in Paragraphs 44-67,
above.

69. Respondent's testing of Patient #2's vision after dilation in order to
support Respondent's recommendation for cataract surgery constitutes
conduct which evidences unfitness to practice medicine under 26 V.S.A.
§1354(a)(7).

**Count XVII- Willful Misrepresentation in Treatment Under 26 V.S.A.
§1354(a)(14)**

70. The State hereby incorporates the allegations in Paragraphs 44-69,
above.

71. Respondent's recommendation to Patient #2 that she undergo
unnecessary cataract surgery constitutes willful misrepresentation in
treatment under 26 V.S.A. §1354(a)(14).

**Count XVIII- Willfully Making and Filing False Reports or Records in
Practice as a Physician Under 26 V.S.A. §1354(a)(8)**

72. The State hereby incorporates the allegations in Paragraphs 44-71, above.

73. Respondent's falsification of Patient #2's records to support his
recommendation to Patient #2 for unnecessary cataract surgery
constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count XIX-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

74. The State hereby incorporates the allegations in Paragraphs 44-73, above.

75. Respondent's recommendation to Patient #2 that she undergo cataract surgery when there existed only a bare trace of cataract formation constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XX-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

74. The State hereby incorporates the allegations in Paragraphs 44-73, above.

75. The unnecessary cataract extraction surgery performed on Patient #2's right eye constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XXI-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

76. The State hereby incorporates the allegations in Paragraphs 44-75, above.

77. Respondent's falsification of Patient #2's records to support his recommendation to Patient #2 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XXII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

78. The State hereby incorporates the allegations in Paragraphs 44-77, above.

79. Respondent's testing of Patient #2's vision after dilation in order to support Respondent's recommendation for cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XXIII-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

80. The State hereby incorporates the allegations in Paragraphs 44-79, above.

81. Respondent's treatment of Patient #2 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Count XXIV-Failure To Practice Competently Under 26 V.S.A. §1354(b)

82. The State hereby incorporates the allegations in Paragraphs 44-81, above.

83. Respondent's treatment of Patient #2 exhibits both (a) a performance of unsafe or unacceptable patient care and (b) a failure to conform to the essential standards of acceptable and prevailing standards and thereby constitutes a failure to practice competently under 26 V.S.A. §1354(b).

**Complaint of Patient #4 (MPC 148-0803) and Charges of Unprofessional
Conduct related thereto***

84. Patient #4 had been a patient of the Respondent since 1978. Patient #4 required periodic examinations of her vision because of medication that Patient #4 was taking.

85. At one appointment with Respondent, Patient #4 complained of problems with vision at night. Respondent informed Patient #4 that the problems were a result of her cataracts and that Respondent could perform surgery to correct the problem. Patient #4 asked if there were alternatives to surgery and Respondent recommended anti-glare treatment for her driving glasses. Patient #4 had anti-glare treatment for her driving glasses and Patient #4 could see much better at night.

86. On July 8th 2002 Respondent informed Patient #4 that Respondent did not understand why Patient #4 did not have complaints about her vision due to her cataracts. Respondent informed Patient #4 that Patient #4 had repeatedly failed the cataract test. Respondent showed Patient #4 graphs indicating her results on the cataract test. Respondent informed Patient #4 that he could not recommend her for surgery if she did not have complaints.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

* The State has determined that, because of subsequent complaints against Respondent that serve as the basis for the Superceding Specification of Charges, the allegations relating to Patient #3 in the State's initial Specification of Charges are no longer necessary to establish a pattern or practice on the part of Respondent.

87. Upon information and belief, the cataract test was the CST with BAT.
88. Patient #4 was upset to learn that she had repeatedly failed the cataract test. As of July 8, 2002, Patient #4 had required glasses only for driving and sometimes for a movie.
89. Respondent's notes for Patient #4 on July 8, 2002 indicate that Patient #4 cannot see to drive safely.
90. Patient #4 did not indicate to Respondent on July 8, 2002 that Patient #4 could not drive safely because of vision.
91. In the early summer of 2003, Patient #4 began to notice a problem seeing very small objects. Because of this problem and because it was time for Patient #4's periodic eye exam, Patient #4 made an appointment with Respondent for June 30, 2003.
92. Respondent's records for Patient #4 on June 30, 2003 indicate that Respondent measured Patient #4's visual acuity at 20/70 left eye and 20/100 right eye.
93. Respondent's records indicate that a CST with BAT was performed on July 3, 2003 with a result of 20/70 left eye and 20/100 right eye.
94. The visual acuity results entered in Patient #4's records for June 30, 2003 are false. The visual acuity results recorded in Patient 4's records for June 30, 2003 were improperly based on CST with BAT and not the Snellen Test. On July 23, 2003 Patient #4 was examined by Geoffrey C. Tabin, M.D. Dr. Tabin concluded that Patient #4's visual acuity in the left eye was 20/25 (+1) and 20/25 (+2) in the right eye.

95. According to Patient #4, the CST with BAT was performed after her pupils were dilated.
96. In Respondent's records for Patient 4 on June 30, 2003, Respondent wrote that Patient 4 "can't see to drive safely due to glare from cataracts."
97. The entry in Patient #4's records that she could not see to drive safely due to glare from cataracts is false. Patient #4 did not state to Respondent on June 30, 2003 that she could not see to drive safely.
98. According to Respondent's records for June 30, 2003, Respondent diagnosed Patient #4 with dense central nuclear cortical cataracts in each eye.
99. The diagnosis of dense nuclear cortical cataracts in both eyes entered in Patient #4's record is false. On July 23, 2003 Patient #4 was examined by Geoffrey C. Tabin, M.D. Dr. Tabin found no "visually significant cataract" in the left eye.
100. According to Respondent's records for June 30, 2003, the treatment plan for Patient #4 was for phaco cataract extraction for the right eye and consider same procedure for left eye "if and when ready."
101. Patient #4 asked Respondent if she should get a second opinion and Respondent said she should not.
102. According to Respondent's records of June 30, 2003 for Patient #4, Patient #4 was given second opinion regarding cataract surgery.
103. Patient #4 was not given a second opinion from another physician regarding cataract surgery.

104. According to Respondent's records of July 3, 2003 for Patient #4, Patient #4 was scheduled for cataract surgery of the right eye on July 15, 2003 and for cataract surgery of the left eye on July 22, 2003.
105. Respondent performed cataract extraction surgery on Patient #4's right eye on July 15, 2003.
106. Upon information and belief, the cataract surgery performed by Respondent on Patient #4 on July 15, 2003 was unnecessary.

Charges of Unprofessional Conduct based on complaint of Patient #4
Count XXV-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

107. The State hereby incorporates the allegations in Paragraphs 84-106, above.
108. Respondent's recommendation to Patient #4 that she undergo cataract surgery when cataracts were visually insignificant constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count XXVI-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

109. The State hereby incorporates the allegations in Paragraphs 84-108, above.
110. The unnecessary cataract extraction performed on Patient #4's right eye constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count XXVII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

111. The State hereby incorporates the allegations in Paragraphs 84-110, above.

112. Respondent's falsification of Patient #4's records to support his recommendation to Patient #4 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count XXVIII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

113. The State hereby incorporates the allegations in Paragraphs 84-112, above.

114. Respondents direction to Patient #4 that she not seek a second opinion constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count XXIX-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

115. The State hereby incorporates the allegations in Paragraphs 84-114, above.

116. Respondent's testing of Patient #4's vision after dilation in order to support Respondent's recommendation for cataract surgery constitutes

conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count XXX- Willful Misrepresentation in Treatment Under 26 V.S.A. §1354(a)(14)

117. The State hereby incorporates the allegations in Paragraphs 84-116, above.

118. Respondent's recommendation to Patient #4 that she undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count XXXI- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

119. The State hereby incorporates the allegations in Paragraphs 84-118, above.

120. Respondent's falsification of Patient #4's records to support his recommendation to Patient #2 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count XXXII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

121. The State hereby incorporates the allegations in Paragraphs 84-120, above.

122. Respondent's recommendation to Patient #4 that she undergo cataract surgery when there was no visually significant cataract formation constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XXXIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

123. The State hereby incorporates the allegations in Paragraphs 84-122, above.

124. The unnecessary cataract extraction surgery performed on Patient #4's right eye constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XXXIV-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

125. The State hereby incorporates the allegations in Paragraphs 44-75, above.

126. Respondent's falsification of Patient #4's records to support his recommendation to Patient #4 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XXXV-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

127. The State hereby incorporates the allegations in Paragraphs 84-126, above.

128. Respondent's testing of Patient #4's vision after dilation in order to support Respondent's recommendation for cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XXXVI-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

129. The State hereby incorporates the allegations in Paragraphs 84-128, above.

130. Respondent's direction to Patient #4's that she not seek a second opinion constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XXXVII-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

131. The State hereby incorporates the allegations in Paragraphs 84-130, above.

132. Respondent's treatment of Patient #4 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Count XXXVIII-Failure To Practice Competently Under 26 V.S.A. §1354(b)

133. The State hereby incorporates the allegations in Paragraphs 84-132, above.

134. Respondent's treatment of Patient #4 exhibits both (a) a performance of unsafe or unacceptable patient care and (b) a failure to conform to the

essential standards of acceptable and prevailing standards and thereby constitutes a failure to practice competently under 26 V.S.A. §1354 (b).

Complaint of Patient #5 (MPC106-0803) and Charges of Unprofessional Conduct related thereto.

135. Patient #5 saw Respondent on September 9, 2002 for an annual check-up.

136. At the appointment of Patient #5 on September 9, 2002, Respondent informed Patient #5 that she had cataracts and attempted to schedule Patient #5 for surgery the following day.

137. Patient #5 was upset by the diagnosis of cataracts and by the prospect of having surgery so soon. Patient #5 informed Respondent that she was directing a play and rehearsal had been scheduled for the following afternoon. Patient #5 asked if she would be able to direct the play in the afternoon. Respondent told Patient #5 that she could have the surgery in the morning and direct the play in the afternoon.

138. Patient #5 was then sent to a nurse in another room to schedule the surgery. The nurse noticed that Patient #5 was shaking and informed Patient #5 that she did not have to do anything she didn't want to. Patient #5 asked the nurse if she would be able to direct a play on the afternoon after the surgery. The nurse said no and that most people who underwent the operation slept for a long time after surgery. Patient #5 told the nurse she did not want surgery.

139. The nurse then informed Respondent that Patient #5 did not want to go forward with the surgery. Respondent pressured Patient #5 to go ahead with the surgery and told Patient #5 forcefully that he had already stated that everything was going to be fine.
140. Patient #5 returned home on September 9, 2002, and called Respondent's office and cancelled the operation scheduled for the next day and did not ask that the operation be rescheduled.
141. Respondent's records for Patient #5 on September 9, 2002 indicate that Patient #5 "can't see to drive safely" due to glare of cataracts.
142. The entry in Patient #5's record that Patient #5 cannot see to drive safely is false. Patient #5 did not indicate to Respondent that Patient #5 could not see to drive safely.
143. Respondent's records for Patient #5 on September 9, 2002 indicate that Patient #5 was given second opinion regarding cataract surgery.
144. Patient #5 received no second opinion from another physician regarding cataract surgery.
145. Respondent's records for Patient #5 on September 9, 2002 indicate that Respondent diagnosed Patient #5 with dense central nuclear cortical cataracts in both eyes.
146. Respondent's diagnosis of Patient #5 as having dense central nuclear cortical cataracts is false. On September 12, 2003, Patient #5 was seen by Dr. Cavin. Dr. Cavin diagnosed Patient #5 as having cataracts that Dr. Cavin concluded were "clinically relatively insignificant [in both eyes]."

Patient #5 indicated to Dr. Cavin that she did not have a problem driving at night.

147. Respondent's records for Patient #5 on September 9, 2002 do not document that Patient #5 was scheduled for cataract surgery the next day, September 10, 2002 or that Patient #5 had concerns regarding the surgery on that day. Instead, Respondent's records indicate that Patient #5 was scheduled for cataract surgery on October 1, 2002 and cancelled the surgery on September 17, 2000.

148. The records of Respondent for Patient #5 lacking documentation of the cataract surgery scheduled for September 10, 2002 and Patient #5's concerns over the surgery and indicating cataract surgery for October 1, 2002 and cancellation by Patient #5 on September 17, 2002 are false.

Charges of Unprofessional Conduct based on complaint of Patient #5
Count XXXIX-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

149. The State hereby incorporates the allegations in Paragraphs 135-148, above.

150. Respondent's recommendation to Patient #5 that she undergo cataract surgery when cataracts were clinically insignificant constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count XL-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

151. The State hereby incorporates the allegations in Paragraphs 135-150, above.

152. Respondent's pressuring of Patient #5 to undergo unnecessary cataract surgery when Patient #5 had reservations about such surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count XLI-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

153. The State hereby incorporates the allegations in Paragraphs 135-152, above.

154. Respondent's falsification of Patient #5's records to support his recommendation to Patient #5 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count XLII- Willful Misrepresentation in Treatment Under 26 V.S.A.
§1354(a)(14)

155. The State hereby incorporates the allegations in Paragraphs 135-154, above.

156. Respondent's recommendation to Patient #5 that she undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count XLIII- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

157. The State hereby incorporates the allegations in Paragraphs 135-156, above.

158. Respondent's falsification of Patient #5's records to support his recommendation to Patient #5 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count XLIV-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

159. The State hereby incorporates the allegations in Paragraphs 135-158, above.

160. Respondent's recommendation to Patient #5 that she undergo cataract surgery when cataracts were clinically insignificant constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XLV-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

161. The State hereby incorporates the allegations in Paragraphs 135-160, above.

162. Respondent's pressuring of Patient #5 to undergo unnecessary cataract surgery when Patient #5 had reservations about such surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XLVI-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

163. The State hereby incorporates the allegations in Paragraphs 135-162, above.

164. Respondent's falsification of Patient #5's records to support his recommendation to Patient #5 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XLVII-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

165. The State hereby incorporates the allegations in Paragraphs 135-164, above.

166. Respondent's treatment of Patient #5 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Count XLVIII-Failure To Practice Competently Under 26 V.S.A. §1354(b)

167. The State hereby incorporates the allegations in Paragraphs 135-166, above.

168. Respondent's treatment of Patient #5 exhibits both (a) a performance of unsafe or unacceptable patient care and (b) a failure to conform to the

essential standards of acceptable and prevailing standards and thereby constitutes a failure to practice competently under 26 V.S.A. §1354 (b).

Complaint of Patient #6 (MPC 140-0803) and Charges of Unprofessional Conduct related thereto.

169. Patient #6 had undergone cataract surgery of the right eye by another ophthalmologist on June 21, 2000 and made an appointment with Respondent for follow-up. Patient #6 was first seen by Respondent on August 16, 2000.
170. Respondent's records for Patient #6 on August 16, 2000 indicate that Patient #6's visual acuity was measured at 20/100 in both eyes.
171. The measure of Patient 6's visual acuity was improperly based on the CST with BAT and not the Snellen test and the entry in Patient #6's record of visual acuity of 20/100 in each eye is false. Patient #6 saw Dr. Phil A. Aitken on May 21, 2002. Dr. Aitken measured Patient #6's visual acuity at 20/20 in each eye.
172. At the appointment of August 16, 2000 Respondent recommended that Patient #6 undergo a YAG capsulectomy for the right eye. Respondent performed the YAG capsulectomy on Patient #6 on August 16, 2000.
173. Patient #6 saw Respondent again on August 30, 2000.
174. Respondent's records for Patient #6 on August 30, 2000 indicate that Patient #6's visual acuity was measured at 20/20 in the right eye and 20/32 in the left eye.

175. The entry in Patient #6's record that visual acuity in Patient #6's left eye was 20/32 is false. Patient #6 saw Dr. Phil A. Aitken on May 21, 2002. Dr. Aitken measured Patient #6's visual acuity at 20/20 in each eye.
176. Respondent's records for Patient #6 on August 30, 2000 indicate that Patient #6 has decreased visual acuity in left eye due to cataract, that Patient #6 wanted cataract removed and that Patient #6 wanted the surgery in January.
177. The entries in Patient #6's record that he had decreased visual acuity in left eye and that Patient #6 requested surgery in January are false. According to Patient #6 he had no problems with vision in left eye, did not request cataract surgery and was told by Respondent cataract surgery was required in six months.
178. Respondent's records for Patient #6 on August 30, 2000 indicate that Respondent diagnosed Patient #6 with dense central nuclear cortical cataract in the left eye.
179. Respondent's entry in Patient #6's record of dense nuclear cortical cataract in the left eye is false. On May 21, 2002, Dr. Aitken found sclerosis in the left eye that was diagnosed as only 1+.

Charges of Unprofessional Conduct based on complaint of Patient #6

**Count XLVIX-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

180. The State hereby incorporates the allegations in Paragraphs 169-179, above.

181. Respondent's recommendation to Patient #6 that he undergo cataract surgery when Patient #6's sclerosis was measured at only 1+ and his visual acuity was 20/20 in each eye constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count L-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

182. The State hereby incorporates the allegations in Paragraphs 169-181, above.

183. Respondent's falsification of Patient #6's records to support his recommendation to Patient #6 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count LI- Willful Misrepresentation in Treatment Under 26 V.S.A. §1354(a)(14)

184. The State hereby incorporates the allegations in Paragraphs 169-183, above.

185. Respondent's recommendation to Patient #6 that he undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count LII- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

186. The State hereby incorporates the allegations in Paragraphs 169-185, above.

187. Respondent's falsification of Patient #6's records to support his recommendation to Patient #6 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count LIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

188. The State hereby incorporates the allegations in Paragraphs 169-187, above.

189. Respondent's recommendation to Patient #6 that he undergo cataract surgery when Patient #6's sclerosis was measured at only 1+ and his visual acuity was 20/20 in each eye constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LIV-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

190. The State hereby incorporates the allegations in Paragraphs 169-189, above.

191. Respondent's falsification of Patient #6's records to support his recommendation to Patient #6 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LV-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

192. The State hereby incorporates the allegations in Paragraphs 169-191, above.

193. Respondent's treatment of Patient #5 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Complaint of Patient #7 (MPC 122-0803) and Charges of Unprofessional Conduct related thereto

180. Patient #7 is a retired dentist and retired faculty member of the John Hopkins School of Medicine.

181. Patient #7 moved to Vermont from Maryland in 1993 and saw Respondent on September 8, 1995 for Patient #7's periodic eye examination.

182. According to Patient #7, at the appointment of September 8, 1995 Respondent looked at Patient #7 briefly and informed Patient #7 that Patient #7 had cataracts in both eyes and required surgery.

183. Patient #7 informed Respondent that he had never been advised that he had cataract formations and informed Respondent that he had not noticed any significant changes in his vision since his last eye exam.

184. Respondent then informed Patient #7 that Patient #7's cataracts were so advanced that if Patient #7 were a truck driver he would not be allowed to work.
185. Patient #7 was surprised and shocked by both Respondent's diagnosis and demeanor.
186. Patient #7 decided not to have surgery and subsequently saw Dr. Edwin J. Guilfooy on January 20, 1998.
187. Dr. Guilfooy did note moderate cataract formation in both eyes but determined that the formations were of no "particular visual significance" to Patient #7.
188. To date Dr. Guilfooy has not recommended cataract surgery to Patient #7.
189. Respondent's notes for Patient #7 on September 9, 1995 do not reflect that any discussion of cataract surgery took place.
190. In a letter to Patient #7's primary physician dated September 15, 1995, Respondent makes no mention either of the advanced nature of Patient #7's cataracts or Respondent's insistence that Patient #7 undergo cataract surgery.

Charges of Unprofessional Conduct based on complaint of Patient #7

**Count LVI-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

191. The State hereby incorporates the allegations in Paragraphs 180-190, above.

192. Respondent's recommendation to Patient #7 that he undergo cataract surgery when Patient #7's cataract formations were of no visual significance constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

**Count LVII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

193. The State hereby incorporates the allegations in Paragraphs 180-192, above.

194. Respondent's statement to Patient #7 that his cataracts were in an advanced state to support his recommendation to Patient #7 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count LVIII- Willful Misrepresentation in Treatment Under 26 V.S.A.
§1354(a)(14)**

195. The State hereby incorporates the allegations in Paragraphs 180-194, above.

196. Respondent's recommendation to Patient #7 that he undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

**Count LIX-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A.
§1398.**

197. The State hereby incorporates the allegations in Paragraphs 180-196, above.

198. Respondent's recommendation to Patient #7 that he undergo cataract surgery when Patient #7's cataract formation was of nor particula visual significance constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

**Count LX-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A.
§1398.**

199. The State hereby incorporates the allegations in Paragraphs 180-198, above.

200. Respondent's representation to Patient #7 that his cataracts were in an advanced state to support Respondent's recommendation that Patient #7 undergo unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LXI-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

201. The State hereby incorporates the allegations in Paragraphs 180-200, above.
202. Respondent's treatment of Patient #7 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Complaint of Patient #8 (MPC 110-0803) and Charges of Unprofessional Conduct related thereto.

203. Patient #8 saw Respondent for a routine eye examination on Friday, June 30, 2000.
204. After examining Patient #8, Respondent informed Patient #8 that she required cataract surgery. Respondent informed Patient #8 that he had an opening for the following Tuesday, July 4, 2000. Respondent told an assistant to schedule Patient #8 for surgery the following Tuesday and had the assistant provide forms for Patient #8 to fill out for the planned operation.
205. Patient #8 had questions about the need for surgery because she had had no real visual problems and was suspicious of Respondent's pushing

Patient #8 into surgery without giving Patient #8 time to weigh the risks and benefits of surgery.

206. Patient #8 informed Respondent's assistant that Patient #8 would need some time to consider surgery.

207. Patient #8 asked her primary physician to make a referral for a second opinion.

208. On October 5, 2000, Patient #8 saw Dr. Alan E. Irwin.

209. Respondent's records for Patient #8 on June 30, 2003 diagnosed Patient #8 with dense central nuclear cortical cataracts in both eyes.

210. The entry in Patient #8's records of the diagnosis of dense central nuclear cortical cataracts in both eyes is false. Dr. Irwin found "the very earliest trace of lens opacity [in both eyes] ...barely enough to call it a cataract." Dr. Irwin concluded that there was "no reason for performing cataract extraction."

211. Respondent's records for Patient #8 on June 30, 2000 state that Patient #8 was given a second opinion.

212. On June 30, 2000 no second opinion was given from another physician as to Patient #8's diagnosis of cataracts and the entry in Patient #8's record that a second opinion was given is false.

213. Respondent's records for Patient #8 on June 30, 2000 state that Patient #8 "wants cataracts removed."

214. The entry in Patient #8's record that Patient #8 wanted cataracts removed is false.

215. Respondent's records for Patient #8 on June 30, 2000 measure Patient #8's visual acuity at 20/32 right eye and 20/63 left eye.

216. The visual acuity entered in Patient #8's records is false. Respondent improperly measured Patient #8's visual acuity by using the CST with BAT. Dr. Irwin measured Patient #8's visual acuity to be 20/20 in right eye and 20/25 in the left eye.

217. Nowhere in Patient #8's records for June 30, 2000 is any indication that Respondent attempted to schedule Patient #8 for surgery on July 4, 2000.

Charges of Unprofessional Conduct based on complaint of Patient #8
Count LXII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)

218. The State hereby incorporates the allegations in Paragraphs 203-217, above.

219. Respondent's recommendation to Patient #8 that she undergo cataract surgery when there was only the very earliest traces of cataract formation constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

**Count LXIII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

220. The State hereby incorporates the allegations in Paragraphs 203-219, above.

221. Respondent's falsification of Patient #8's records to support his recommendation to Patient #8 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count LXIV- Willful Misrepresentation in Treatment Under 26 V.S.A. §1354(a)(14)

222. The State hereby incorporates the allegations in Paragraphs 203-221, above.

223. Respondent's recommendation to Patient #8 that she undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count LXV- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

224. The State hereby incorporates the allegations in Paragraphs 203-223, above.

225. Respondent's falsification of Patient #8's records to support his recommendation to Patient #8 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count LXVI -Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

226. The State hereby incorporates the allegations in Paragraphs 203-225, above.

227. Respondent's recommendation to Patient #8 that she undergo cataract surgery when there existed only the very earliest traces of cataract formation constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LXVII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

228. The State hereby incorporates the allegations in Paragraphs 203-227, above.

229. Respondent's falsification of Patient #8's records to support his recommendation to Patient #8 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LXVIII-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

230. The State hereby incorporates the allegations in Paragraphs 203-229, above.

231. Respondent's treatment of Patient #8 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is

commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Complaint of Patient #9 (MPC 163-0803) and Charges of Unprofesional Conduct related thereto

232. Patient #9 saw Respondent for his annual eye examination on May 21, 2003.
233. After completion of the eye exam Respondent asked Patient #9 if there were any other problems. Patient #9 responded that due to direct sunlight entering through the living room windows, Patient #9 had to shield his eyes from the glare in order to watch television.
234. Respondent then informed Patient #9 that his small cataracts had to be taken care of immediately.
235. Respondent briefly explained the surgery and then referred Patient #9 to his nurse to schedule Patient #9 for surgery on one eye for the following week and the other eye the week after that.
236. When Patient #9 received information from Respondent's office explaining more fully what was involved in the cataract surgery, Patient #9 cancelled his surgery.
237. Patient #9 saw Dr. Edwin Guilfooy on September 25, 2003 for a second opinion regarding his cataracts.

238. Respondent's records for Patient #9 on May 21, 2003 contains a diagnosis for Patient #9 of dense central nuclear cortical cataracts in both eyes.
239. The diagnosis of dense central nuclear cortical cataracts entered in Patient #9's record by Respondent is false. In his examination of Patient #9 on September 25, 2003, Dr. Guilfoy found only slight cataractous change and determined that Patient #9 had "visually insignificant cataracts." Dr. Guilfoy added that he would "not have even noted [cataracts] as a diagnosis if the question had not been raised."
240. Respondent's records for Patient #9 on May 21, 2003 measures Patient #9's visual acuity at 20/70 in each eye.
241. The measurement of visual acuity at 20/70 in each eye entered in Patient #9's record by Respondent is false. Respondent's measurement of Patient #9's visual acuity is improperly based on the CST with BAT testing. On September 25, 2003, Dr. Guilfoy measured Patient #9's visual acuity as 20/20+ in the right eye and 20/15 in the left eye.
242. Respondent's records for Patient #9 on May 21, 2003 state that Patient #9 "can't see to drive safely in glare condition due to cataracts wants cataracts removed."
243. The entries in Patient #9's record by Respondent that Patient #9 cannot see to drive safely due to cataracts and that Patient #9 wanted cataracts removed are false. Patient #9 never informed Respondent that he had problems driving or with glare and never told Respondent he

wanted cataracts removed. Patient #9 told Dr. Guilfooy that he had no problems with glare or nighttime driving.

244. Respondent's records for Patient #9 on May 21, 2003 state that a second opinion was given as to Patient #9's need for cataract surgery.

245. The entry in Patient #9's record by Respondent that a second opinion was given as to Patient #9's need for cataract surgery is false. On or before May 21, 2003 no opinion was provided by a second physician that cataract surgery was necessary for Patient #9.

Charges of Unprofessional Conduct based on complaint of Patient #9

Count LXIX-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

246. The State hereby incorporates the allegations in Paragraphs 232-245, above.

247. Respondent's recommendation to Patient #9 that he undergo cataract surgery when there was only slightly cataractous change and such cataracts were visually insignificant constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count LXX-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

248. The State hereby incorporates the allegations in Paragraphs 232-247, above.

249. Respondent's falsification of Patient #9's records to support his recommendation to Patient #9 for unnecessary cataract surgery

constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count LXXI-Willful Misrepresentation in Treatment Pursuant to 26 V.S.A. §1354(a)(14)

250. The State hereby incorporates the allegations in Paragraphs 232-249, above.

251. Respondent's recommendation to Patient #9 that he undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count LXXII - Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

252. The State hereby incorporates the allegations in Paragraphs 232-251, above.

253. Respondent's falsification of Patient #9's records to support his recommendation to Patient #9 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count LXXIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

254. The State hereby incorporates the allegations in Paragraphs 232-253, above.

255. Respondent's recommendation to Patient #9 that he undergo cataract surgery when there existed only slight cataractous change and visually insignificant cataract formation constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LXXIV-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

256. The State hereby incorporates the allegations in Paragraphs 232-255, above.

257. Respondent's falsification of Patient #9's records to support his recommendation to Patient #9 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LXXV-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

258. The State hereby incorporates the allegations in Paragraphs 232-257, above.

259. Respondent's treatment of Patient #9 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Count LXXVI -Failure To Practice Competently Under 26 V.S.A. §1354(b)

260. The State hereby incorporates the allegations in Paragraphs 232-259, above.

261. Respondent's treatment of Patient #9 exhibits both (a) a performance of unsafe or unacceptable patient care and (b) a failure to conform to the

essential standards of acceptable and prevailing standards and thereby constitutes a failure to practice competently under 26 V.S.A. §1354(b).

Complaint of Patient #10 (MPC 126-0803) and Charges of Unprofessional Conduct related thereto.

262. Patient #10 first saw Respondent on November 10, 1982 after hay chaff had gotten into Patient #10's eyes.
263. At the appointment of November 10, 1982, Respondent asked Patient #10 if Patient #10 had ever had an eye exam. Patient #10 said he had not. Respondent scheduled Patient #10 for an eye exam on or about November 23, 1982.
264. After Patient #10 's eye exam Respondent informed Patient #10 that he had glaucoma. From March of 1982 through January of 1993, Patient #10 was seen by Respondent twice a year and prescribed eye drops for Patient #10's diagnosis of glaucoma.
265. In January, 1993, Patient #10 saw Respondent for his periodic exam. At that appointment Respondent informed Patient #10 that Patient #10 had cataracts and that Respondent would schedule surgery for cataract extraction the next week.
266. Patient #10 informed Respondent that he (Patient #10) had not experienced any visual problems but Respondent insisted that Patient #10 had visual problems.
267. Respondent informed Patient #10 that he could a second opinion but that no other doctor would question his prognosis.

268. On February 25, 1993, Patient #10 saw Dr. Karen Cleary for a second opinion. Dr. Cleary found cataracts of only 1+ and found no trace of glaucoma. Dr. Cleary measured Patient #10 's visual acuity at 20/20 in each eye.

269. On April 10, 1995 and again on August 1, 1995, Patient #10 saw Dr. Kathleen Maguire. Dr. Maguire found only a trace of cataracts and confirmed Patient #10 did not have glaucoma. Dr. Maguire measured Patient #10 's visual acuity as 20/20 in each eye.

Charges of Unprofessional Conduct based on complaint of Patient #10

**Count LXXVII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

270. The State hereby incorporates the allegations in Paragraphs 262-269, above.

271. Respondent's recommendation to Patient #10 that he undergo cataract surgery when there was only a trace of cataract formation measured as 1+ constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

**Count LXXVIII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

272. The State hereby incorporates the allegations in Paragraphs 262-271, above.

273. Respondent's diagnosis and treatment of glaucoma for Patient #10 when Patient #10 had no glaucoma constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count LXXIX-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

274. The State hereby incorporates the allegations in Paragraphs 262-273, above.

275. Respondent's falsification of Patient #10's records to support his recommendation to Patient #10 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count LXXX-Willful Misrepresentation in Treatment Under 26 V.S.A.
§1354(a)(14)**

276. The State hereby incorporates the allegations in Paragraphs 262-275, above.

277. Respondent's recommendation to Patient #10 that he undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count LXXXI- Willful Misrepresentation in Treatment Under 26 V.S.A. § 1354(a)(14).

272. The State hereby incorporates the allegations in Paragraphs 262-271, above.

273. Respondent's diagnosis of glaucoma for Patient #10 when Patient #10 did not have glaucoma constitutes willful misrepresentation in treatment pursuant to 26 V.S.A. §1354 (a)(14).

Count LXXXII- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

278. The State hereby incorporates the allegations in Paragraphs 262-273, above.

279. Respondent's falsification of Patient #10's records to support his recommendation to Patient #10 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count LXXXIII -Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

280. The State hereby incorporates the allegations in Paragraphs 44-73, above.

281. Respondent's recommendation to Patient #10 that he undergo cataract surgery when there existed only a trace of cataract formation measured at 1+ constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LXXXIV-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

282. The State hereby incorporates the allegations in Paragraphs 262-281, above.

283. Respondent's diagnosis and treatment of glaucoma for Patient #10 when Patient #10 did not have glaucoma constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LXXXV-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

284. The State hereby incorporates the allegations in Paragraphs 262-283, above.

285. Respondent's falsification of Patient #10's records to support his recommendation to Patient #10 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count LXXXVI-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

286. The State hereby incorporates the allegations in Paragraphs 262-285, above.

287. Respondent's treatment of Patient #10 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent

physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Complaint of Patient #11 (MPC 209-1003) and Charges of Unprofessional Conduct related thereto.

288. Patient #11 had been a patient of Respondent since 1972.

289. On June 16, 2003, Respondent diagnosed Patient #11 with dense central nuclear cortical cataracts in both eyes. Respondent planned cataract surgery for Patient #11 for the right eye on July 1, 2003 and for the left eye on July 8, 2003.

290. On June 24, 2003 Patient #11 called Respondent's office to postpone the cataract surgery on the left eye scheduled for July 8, 2003. The cataract surgery for Patient #11's left eye was rescheduled for July 21, 2003.

291. On July 1, 2003 Respondent performed cataract surgery on Patient #11's right eye.

292. On information and belief the cataract surgery Respondent performed on Patient #11's right eye was unnecessary.

293. The cataract surgery on Patient #11's left eye scheduled for July 21, 2003 was cancelled when the Vermont Board of Medical Practice summarily suspended Respondent's license.

294. Patient #11 saw Dr. Patrick Morhun on October 21, 2003.

295. In Respondent's record for Patient #11 on June 13, 2003, Respondent diagnosed Patient #11 with dense central nuclear cortical cataracts in both eyes.
296. The entry by Respondent in Patient #11's record for June 13, 2003 of a diagnosis of dense central nuclear cortical cataracts in both eyes is false. In his examination of Patient #11 on October 21, 2003, Dr. Morhun found a "trace, barely noticeable" of cataract in Patient #11's left eye.
297. In Respondent's record for Patient #11 on June 13, 2003, Respondent recorded Patient #11's visual acuity as 20/100 in each eye.
298. The entry by Respondent in Patient #11's record of visual acuity of 20/100 in each is false. The visual acuity results recorded by Respondent are improperly based on the CST with BAT. In his examination of Patient #11 in October 21, 2003, Dr. Morhun determined the visual acuity in Patient #11's left eye to be 20/20.
299. In Respondent's record for Patient #11 on June 13, 2003 there is an entry indicating that Patient #11 received a second opinion from another physician as to Patient #11's need for cataract surgery.
300. The entry in Patient #11's record of June 13, 2003 that a second opinion from another physician was given as to Patient #11's need for cataract surgery is false.

Charges of Unprofessional Conduct based on complaint of Patient #11

**Count LXXXVII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

300. The State hereby incorporates the allegations in Paragraphs 288-300, above.

301. Respondent's recommendation to Patient #11 that she undergo cataract surgery when there was only a bare trace of cataract formation constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

**Count LXXXVIII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

302. The State hereby incorporates the allegations in Paragraphs 288-301, above.

303. The unnecessary cataract extraction performed on Patient #11's right eye constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count LXXXIX-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

304. The State hereby incorporates the allegations in Paragraphs 288-303, above.

305. Respondent's falsification of Patient #11's records to support his recommendation to Patient #11 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count XC- Willful Misrepresentation in Treatment Under 26 V.S.A. §1354(a)(14)

306. The State hereby incorporates the allegations in Paragraphs 288-305, above.

307. Respondent's recommendation to Patient #11 that she undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count XCI- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

308. The State hereby incorporates the allegations in Paragraphs 288-307, above.

309. Respondent's falsification of Patient #11's records to support his recommendation to Patient #11 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count XCII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

310. The State hereby incorporates the allegations in Paragraphs 288-309, above.

311. Respondent's recommendation to Patient #11 that she undergo cataract surgery when there existed only a bare trace of cataract formation constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XCIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

312. The State hereby incorporates the allegations in Paragraphs 288-311, above.

313. The unnecessary cataract extraction surgery performed on Patient #11's right eye constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XCIV-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

314. The State hereby incorporates the allegations in Paragraphs 288-313, above.

315. Respondent's falsification of Patient #11's records to support his recommendation to Patient #11 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XCV-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

316. The State hereby incorporates the allegations in Paragraphs 288-315, above.

317. Respondent's treatment of Patient #11 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent

physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Count XCVI-Failure To Practice Competently Under 26 V.S.A. §1354(b)

318. The State hereby incorporates the allegations in Paragraphs 288-317, above.

319. Respondent's treatment of Patient #2 exhibits both (a) a performance of unsafe or unacceptable patient care and (b) a failure to conform to the essential standards of acceptable and prevailing standards and thereby constitutes a failure to practice competently under 26 V.S.A. §1354(b).

Complaint of Patient #12 (MPC 89-0703) and Charges of Unprofessional Responsibility related thereto.

320. Patient #12 saw Respondent for a regular eye exam on June 19, 1998.

321. Respondent informed Patient #12 that he needed cataract surgery and Patient #12 could schedule his surgery for the following Tuesday.

322. Respondent did not give Patient #12 time to discuss why there was an urgent need for cataract surgery nor time to discuss the possibility of a second opinion.

323. Patient #12 was apprehensive about agreeing to surgery and instead sought a second opinion from Dr. James Watson. Patient #12 saw Dr. Watson on September 28, 1998.

324. In Respondent's record for Patient #12 on June 19, 1998, there is entered a diagnosis of dense central nuclear cortical cataracts in both eyes.

325. The diagnosis in Patient #12's record of dense central nuclear cortical cataracts is false. In his examination of Patient #12 on June 19, 1998, found only a trace of sclerosis on both eyes that was compatible with Patient #12's age. Dr. Watson also saw Patient #12 on April 3, 2002 and there was no change in Patient #12's condition.

326. In Respondent's record for Patient #12 on June 19, 1998, Respondent indicated that Patient #12's cataracts interferes with Patient #12's life and that Patient #12 wants cataracts removed in both eyes.

327. The entries by Respondent in Patient #12's record that Patient #12's cataracts interfere with his life and that Patient #12 wanted cataract surgery are false. Patient #12 never indicated that cataracts interfered with his life and did not state that he wanted cataract surgery.

328. In Respondent's records for Patient #12 on June 19, 1998, Respondent measures Patient #12's visual acuity as 20/40 right eye and 20/63 left eye.

329. The entry in Patient #12's record of visual acuity of 20/40 right eye and 20/63 left eye are false. Respondent's measurement of Patient #12's visual acuity is improperly based on the CST with BAT. In his examination of Patient #12 on September 28, 1998, Dr. Watson measured Patient #12's visual acuity as 20/25 right eye and 20/20 left eye.

330. In Respondent's records for Patient #12 on June 19, 1998, it is indicated that Patient #12 received a second opinion from another physician as to the need for cataract surgery.

331. The entry in Respondent's record for Patient #12 that a second opinion was given by another physician on or before June 19, 1998 as to Patient #12's need for cataract surgery is false.

Charges of Unprofessional Conduct based on complaint of Patient #12

Count XCVII-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

332. The State hereby incorporates the allegations in Paragraphs 320-331, above.

333. Respondent's recommendation to Patient #12 that he undergo cataract surgery when there was only a trace of cataract formation constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count XCVIII-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

334. The State hereby incorporates the allegations in Paragraphs 320-333, above.

335. Respondent's falsification of Patient #2's records to support his recommendation to Patient #2 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count XCIX- Willful Misrepresentation in Treatment Under 26 V.S.A. §1354(a)(14)

336. The State hereby incorporates the allegations in Paragraphs 320-335, above.

337. Respondent's recommendation to Patient #12 that he undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count C- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

338. The State hereby incorporates the allegations in Paragraphs 320-337, above.

339. Respondent's falsification of Patient #12's records to support his recommendation to Patient #12 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count CI-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

340. The State hereby incorporates the allegations in Paragraphs 320-339, above.

341. Respondent's recommendation to Patient #12 that he undergo cataract surgery when there existed only a trace of cataract formation constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

342. The State hereby incorporates the allegations in Paragraphs 320-341, above.

343. Respondent's falsification of Patient #12's records to support his recommendation to Patient #12 for unnecessary cataract surgery

constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CIII-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

344. The State hereby incorporates the allegations in Paragraphs 320-343, above.

345. Respondent's treatment of Patient #12 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Complaint of Patient #13 (MPC 90-0703) and Charges of Unprofessional Conduct related thereto.

346. Patient #13 saw Respondent on October 30, 2002 for an evaluation and a new prescription for eyeglasses.

347. At the appointment of October 30, 2002, Respondent informed Patient #13 that he required cataract surgery very soon. Respondent offered no alternatives to surgery nor offered explanation as to why there was an urgent need for cataract surgery.

348. When Respondent offered to explain the surgery, Patient #13 refused. Despite Patient #13's lack of interest in surgery, Respondent persisted in discussing surgery.

349. Respondent informed Patient #13 that there was no point in Patient #13 seeking a second opinion because Respondent was the only physician in Vermont qualified to do this surgery.
350. On November 6, 2002, Patient #13 saw Dr. Dora Sudarsky for a second opinion.
351. In the Respondent's record for Patient #13 on October 30, 2002, the diagnosis for Patient #13 is dense central nuclear cortical cataracts in both eyes.
352. The diagnosis of Patient #13 of dense central nuclear cortical cataracts is false. In her examination of Patient #13 on November 6, 2002, Dr. Sudarsky found some cataract formation in the right eye and no cataract formation in the left eye. Dr. Sudarsky also concluded that she would not recommend Patient #13 for cataract surgery for either eye.
353. In the Respondent's record for Patient #13 on October 30, 2002 the Respondent states that Patient #13 "wants cataracts removed."
354. The entry by Respondent in Patient #13's record that Patient #13 wanted cataracts removed is false.
355. In the Respondent's record for Patient #13 on October 30, 2002, it is stated that Patient #13 was given a second opinion from another physician regarding Patient #13's need for cataract surgery.
356. The entry in Patient #13's record that a second opinion was given by another physician as to Patient #13's need for cataract surgery is false.

Charges of Unprofessional Conduct based on complaint of Patient #13

**Count CIV-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

357. The State hereby incorporates the allegations in Paragraphs 346-356, above.

358. Respondent's recommendation to Patient #14 that he undergo cataract surgery when no such surgery was indicated constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

**Count CV-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

359. The State hereby incorporates the allegations in Paragraphs 346-358, above.

360. Respondent's insistence that Patient #13 undergo cataract surgery, without discussing alternatives to surgery, and when Patient #13 indicated he did not want surgery, constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count CVI-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

361. The State hereby incorporates the allegations in Paragraphs 346-360, above.

362. Respondent's falsification of Patient #13's records to support his recommendation to Patient #13 for unnecessary cataract surgery

constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count CCVII- Conduct Which Evidences Unfitness to Practice Medicine Under 26 V.S.A. § 1354(a)(7)

363. The State incorporates the allegations in Paragraphs 346-362, above.

364. Respondent's attempt to discourage Patient #13 from obtaining a second opinion constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count CVIII- Willful Misrepresentation in Treatment Under 26 V.S.A. §1354(a)(14)

365. The State hereby incorporates the allegations in Paragraphs 346-364, above.

366. Respondent's recommendation to Patient #13 that he undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count CIX- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

367. The State hereby incorporates the allegations in Paragraphs 346-366, above.

368. Respondent's falsification of Patient #13's records to support his recommendation to Patient #13 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count CX-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

369. The State hereby incorporates the allegations in Paragraphs 346-368, above.

370. Respondent's recommendation to Patient #13 that he undergo cataract surgery when such surgery was not indicated constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXI -Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

371. The State hereby incorporates the allegations in Paragraphs 346-370, above.

372. Respondent's insistence that Patient #13 undergo cataract surgery without discussing alternatives to surgery and when Patient #13 indicated he did not want surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

373. The State hereby incorporates the allegations in Paragraphs 346-372, above.

374. Respondent's falsification of Patient #13's records to support his recommendation to Patient #13 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

375. The State hereby incorporates the allegations in Paragraphs 346-374, above.

376. Respondent's attempt to discourage Patient #13 from obtaining a second opinion constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXIV-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

377. The State hereby incorporates the allegations in Paragraphs 346-376, above.

378. Respondent's treatment of Patient #13 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Count CXV-Failure To Practice Competently Under 26 V.S.A. §1354(b)

379. The State hereby incorporates the allegations in Paragraphs 346-378, above.

380. Respondent's treatment of Patient #13 exhibits both (a) a performance of unsafe or unacceptable patient care and (b) a failure to conform to the

essential standards of acceptable and prevailing standards and thereby constitutes a failure to practice competently under 26 V.S.A. §1354(b).

Complaint of Patient #14 (MPC 87-0703) and Charges of Unprofessional Conduct related thereto.

381. Patient #14 saw Respondent on November 20, 2002 to update her prescription for eyeglasses and/or contact lenses.
382. After being examined by Respondent and his assistants, Patient #14 was informed by Respondent that she needed cataract surgery.
383. When Patient #14 questioned Respondent about the need for surgery, Respondent referred Patient #14 to his secretary for scheduling the surgery.
384. When Patient #14 suggested she might get a second opinion, Respondent told Patient #14 that no second opinion was necessary because Respondent was the most qualified surgeon in the State.
385. Despite Respondent's efforts to dissuade Patient #14 from receiving a second opinion, Patient #14 saw Dr. Alan Irwin on January 15, 2003 and saw Dr. Edwin Guilfooy on February 9, 2003.
386. In Respondent's record for Patient #14 on November 20, 2002, Respondent wrote that Patient #14 "can't see to drive safely ...due to cataracts wants cataracts removed."
387. Entries by Respondent in Patient #14 's record that Patient #14 cannot see to drive safely and that Patient #14 wanted cataracts removed are false.

388. In Respondent's records for Patient #14 on October 30, 2002, Patient #14 is diagnosed with dense central nuclear cortical cataracts in both eyes.

389. The diagnosis entered in Patient #14's record of dense central nuclear cortical cataracts in both eyes is false. In his examination of Patient #14 on January 15, 2003, Dr. Irwin found only the early stages of cataracts and recommended no surgery. In his examination of Patient #14 on February 9, 2003, Dr. Guilfoxy characterized the examination as normal.

390. In Respondent's records for Patient #14 on October 30, 2002, Respondent records a measurement of Patient #14's visual acuity as 20/100 right eye and 20/70 left eye.

391. The measurement of Patient #14's visual acuity as 20/100 right eye and 20/70 left eye entered in Patient #14's record is false. Respondent's measurement of Patient #14's visual acuity is improperly based on CST with BAT. In his examination of Patient #14 on January 15, 2003 Dr. Irwin measured Patient #14's visual acuity as 20/20 in each eye. In his examination of Patient #14 on February 9, 2003, Dr. Guilfoxy measured Patient #14's visual acuity as 20/13 in each eye.

392. In Respondent's records for Patient #14 on October 30, 2002, it is indicated that Patient #14 received a second opinion from another physician as to Patient #14's need for cataract surgery.

393. The entry in Patient #14's record that a second opinion from another physician was received as to Patient #14's need for cataract surgery is false.

Charges of Unprofessional Conduct based on complaint of Patient #14

Count CXVI-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

394. The State hereby incorporates the allegations in Paragraphs 381-393, above.

395. Respondent's recommendation to Patient #14 that she undergo cataract surgery when there was only existed the early traces of cataract formation constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count CXVII-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

396. The State hereby incorporates the allegations in Paragraphs 381-395, above.

397. Respondent's attempt to discourage Patient #14 from obtaining a second opinion constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count CXVIII-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

398. The State hereby incorporates the allegations in Paragraphs 381-395, above.

399. Respondent's falsification of Patient #2's records to support his recommendation to Patient #2 for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count CIXX- Willful Misrepresentation in Treatment Under 26 V.S.A. §1354(a)(14)

400. The State hereby incorporates the allegations in Paragraphs 381-399, above.

401. Respondent's recommendation to Patient #14 that she undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

Count CXX- Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

402. The State hereby incorporates the allegations in Paragraphs 381-401, above.

403. Respondent's falsification of Patient #14's records to support his recommendation to Patient #14 for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count CXXI-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

404. The State hereby incorporates the allegations in Paragraphs 381-403, above.

405. Respondent's recommendation to Patient #14 that she undergo cataract surgery when there existed only the stages of cataract formation constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXXII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

406. The State hereby incorporates the allegations in Paragraphs 381-405, above.

407. Respondent's attempt to discourage patient #14 from obtaining a second opinion constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXXIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

408. The State hereby incorporates the allegations in Paragraphs 381-407, above.

409. Respondent's falsification of Patient #14's records to support his recommendation to Patient #14 for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXXIV- Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

410. The State hereby incorporates the allegations in Paragraphs 381-409, above.

411. Respondent's treatment of Patient #14 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Count CXXV-Failure To Practice Competently Under 26 V.S.A. §1354(b)

412. The State hereby incorporates the allegations in Paragraphs 381-411, above.

413. Respondent's treatment of Patient #14 exhibits both (a) a performance of unsafe or unacceptable patient care and (b) a failure to conform to the essential standards of acceptable and prevailing standards and thereby constitutes a failure to practice competently under 26 V.S.A. §1354(b).

II. Allegations Based On Statements of Respondent's Office Staff.

Amy Landry

414. Amy Landry had worked for Respondent for eleven months but left his employ on July 11, 2003 because she was unhappy with Respondent.

415. Ms. Landry stated that she believed Respondent crafted records to force patients into cataract surgery.

416. According to Ms. Landry, recording of tests results was different for a patient that was above the age of approximately 35 and had no prior cataract surgery (hereinafter referred to as "target group"). For patients in the target group, technicians were instructed not to record any test results in the chart, but instead to write testing results on post-it paper.

417. One of the tests performed by the technician is a Contrast Sensitivity Test ("CST") with Brightness Acuity Test ("BAT"). As with the other tests for patients in the target group, the results of the CST with BAT were recorded on post-it paper.

418. Ms. Landry stated that if Respondent was dissatisfied with the results of the CST with BAT he would instruct the technician to perform the CST with BST again after the patient's eyes had been dilated. According to Ms. Landry, results from CST with BAT after dilation are always going to be bad.

419. For patients in the target group, the results of the CST with BAT (either before or after are recorded in the visual acuity space in the record instead of basic visual acuity, which is measured by the Snellen chart.

420. After the tests were performed Respondent would conduct a slit lamp where Respondent would, with patients of the target group, begin what Ms. Landry characterizes as a "spiel" concerning the presence of cataracts.

421. Respondent had his examinations transcribed and a "script" on an index card was taped to the machine in the examination for the benefit of the "scribe."

422. Ms. Landry stated that the speech about cataracts is verbatim almost every time.

423. Ms. Landry stated that in his speech about cataracts Respondent tells every patient they don't need a second opinion, that he (Respondent) is going to give the patient a second opinion.

Dr. Vincent J. DeVita

424. Vincent J. Devita, O.D., F.A.A.O, a Vermont licensed optometrist, had worked for Respondent for the past 11 months. Dr. Devita said the office procedure was not to write the test results in the patient's chart but to record them on a yellow sticky note that would be attached to the chart. Dr. Devita did not agree with this practice. Dr. Devita stated that the office technicians told him that often Respondent would have them conduct additional testing after the eye was dilated, which would skew the test result. Dr. Devita objected to Respondent that no other doctor would do this, and Respondent replied that he did not care what other doctors would do. Dr. Devita saw that testing results done with a light glaring into the patient's eyes were being recorded in the standard visual acuity portion of the patients' charts, where they did not belong.

425. Dr. Devita stated that the records in the office were color-coded.

Patients that had blue charts had cataract surgery and brown charts were those that had not yet had cataract surgery.

426. Approximately one week after the arrival of a new Business Manager, stated Dr. Devita, he had a meeting with Respondent and Respondent's wife and expressed his concerns. Dr. Devita said his employment was terminated July 3, 2003, and he was given no notice but simply told to leave.

Stephen Green

427. Stephen Green is the former business manager of the Medical Office of Respondent. Mr. Green has a Masters Degree in Business from Cornell University and has worked in the optical profession for approximately forty years.

428. Mr. Green stated that when he took over as business manager he did some statistics to determine how the medical office was doing financially. Mr. Green stated that he found the amount of patients that Respondent seen has dropped by 50% over the past ten years. Mr. Green stated that during that same time period, the surgical rate for cataract surgeries has remained constant, about 350 cataract surgeries per year.

429. Mr. Green stated further that two years ago 1 out of every 16 patients were getting cataract surgery and one year ago, 1 out of every 12 patients were getting cataract surgery and now presently, 1 out of every 10

patients are getting cataract surgery. Mr. Green stated that Dr. Chase's office sees about 22 to 23 patients per day.

Kathleen Miceli

430. Ms. Miceli was a former employee of Respondent and worked for him as an "Ophthalmologist Assistant" from November 2001 to April 2002.

431. Ms. Miceli stated that her primary duty was to be in the exam room with Respondent and "scribe" (record what Respondent stated in the exam room). Ms. Miceli stated that for the most part she wrote directly into the patient's chart.

432. Ms. Miceli stated everything in Respondent's office was very "regimented" and there were "cheat sheets" for everything. Ms. Miceli explained that everything was written down for what needed to be put in the patient's charts.

433. Ms. Miceli stated that Respondent booked his office appointments very heavily and maybe 40 people per day would be seen between the two doctors in the office.

434. Ms. Miceli stated that she believed that Respondent really pushed patients towards cataract surgery. Ms. Miceli stated that typically, Respondent would ask a patient if he or she had trouble seeing at night while driving their car. Ms. Miceli stated that if the patient stated "no", then Respondent would ask them if they had trouble seeing at night when it is raining, and when they meet an oncoming vehicle with their headlights on. Ms. Miceli stated that typically the patient would then say

“yes”. Ms. Miceli stated that then Respondent would tell her to write down, “Patient can’t drive safely at night, needs cataract surgery”.

435. Ms. Miceli stated that Respondent always wanted the patient to get surgery as quickly as possible and if the patient asked him if they could get a second opinion, he would normally get angry and tell them that he was their second opinion. According to Ms. Miceli, Respondent would tell the patients that he had more experience in cataract removal and he also had another certification that other doctors didn’t have.

436. Ms. Miceli stated that the CST with BAT simulates your vision’s ability with lights glaring into your eyes, such as night driving. Ms. Miceli stated that sometimes this test was done and then a patient’s eyes were dilated and then the test was done again. Ms. Miceli stated that she believes that if the first test that was done didn’t show a bad result for the patient, then Respondent would order the second test after the person’s eyes were dilated and then when the next test was given, the patient’s eyes would be blurry so a bad result would be obtained.

437. Ms. Miceli stated that one time in the exam room, she saw Respondent take the form that had the first test results on it and put it in his coat pocket. Ms. Miceli stated that a second test was done and only the second test results were put in the patient’s chart. Ms. Miceli stated that the second test was done after the patient’s eyes were dilated.

438. Ms. Miceli stated that Respondent was not pleasant with his patients or his staff. Ms. Miceli stated that Respondent did not like to be

questioned. He said on occasion that he was the boss and what he said goes. Ms. Miceli stated that she was in the exam room one time when Respondent yelled at a patient when the patient questioned him about having cataract surgery.

439. Ms. Miceli stated that she left the employ of Respondent because she felt very uncomfortable with the way that Respondent pushed cataract surgery on his patients.

III. Allegations Based on Statements from Ophthalmologists.

Dr. Thomas Cavin

440. Dr. Thomas Cavin is an ophthalmologist and has practiced in the Burlington area for 18 years.
441. Dr. Cavin stated that since he has been practicing, he has had over 10 patients that had been seen by Respondent and had come to him for a second opinion. Dr. Cavin stated that each of the patients told him that Respondent had recommended they undergo cataract surgery. Each of the patients wanted Dr. Cavin's opinion as to whether such surgery was needed.
442. Dr. Cavin stated that he did find patients that in his opinion did not need cataract surgery, however in some of the patients, he agreed with Dr. Chase's opinion.
443. Dr. Cavin stated that approximately 5 years ago, he gave a second opinion to a patient of Dr. Chase's that cataract surgery was not necessary. Dr. Cavin stated that Dr. Chase called him and stated

“couldn’t you see the cataract”? Dr. Cavin stated that they had a discussion about this patient and they ended up disagreeing.

444. Dr. Cavin stated that when he would disagree with another doctor’s findings, he would send a letter to that physician for the patient’s file if the patient asked them to.

Dr. Edwin Guilfoy

445. Dr. Edwin Guilfoy is an ophthalmologist and has practiced in the Essex Jct. Area for 20 years.

446. Dr. Guilfoy stated that for the past twenty years he has been aware that Dr. Chase was doing more cataract surgeries than probably were needed. Dr. Guilfoy stated that he has had at least 50 patients of Dr. Chase’s that came to him for second opinions and he disagreed with Dr. Chase that any of them needed cataract surgery.

Dr. Alan E. Irwin

447. Dr. Alan E. Irwin is an ophthalmologist and has practiced in the Burlington area for about 20 years.

448. Dr. Irwin stated that during the past 20 years he would see a patient of Respondent's about every eight to ten weeks. Dr. Irwin stated further the patient would ask him for a second opinion because Dr. Chase wanted to perform cataract surgery on them. Dr. Irwin stated that about 95% of the time, he disagreed with Dr. Chase’s diagnosis.

449. Dr. Irwin stated that he never got a referral from Dr. Chase regarding any of his patients and the ones that came in for a second opinion, came in

on their own. Dr. Irwin stated that he was told by at least 5 patients that Dr. Chase had advised them not to see him because he (Dr. Irwin) wouldn't be able to see the cataract.

IV. CHARGES OF UNPROFESSIONAL CONDUCT BASED ON RESPONDENT'S PATTERN AND PRACTICE

Count CXXVI-Conduct Which Evidences Unfitness to Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

450. The State hereby incorporates the allegations in Paragraphs 1-449, above.

451. Respondent's pattern and practice of recommending to patients on two or more occasions that they undergo unnecessary cataract surgeries constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count CXXVII-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

452. The State hereby incorporates the allegations in Paragraphs 1-451, above.

453. Respondent's pattern and practice of directing patients on two or more occasions not to seek a second opinion constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count CXXVIII-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

454. The State hereby incorporates the allegations in Paragraphs 1-453, above.

455. Respondent's pattern and practice, on two or more occasions, of falsifying patient records to support his recommendations for unnecessary cataract surgeries constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a) (7).

Count CXXIX- Willful Misrepresentation in Treatment Under 26 V.S.A. §1354(a)(14).

456. The State hereby incorporates the allegations in Paragraphs 1-456, above.

457. Respondent's pattern and practice of recommending to patients, on two or more occasions, that they undergo unnecessary cataract surgeries constitutes willful misrepresentations in treatments under 26 V.S.A. §1354(a)(14).

Count CXXX-Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

458. The State hereby incorporates the allegations in Paragraphs 1-457, above.

459. Respondent's pattern and practice, on two or more occasions, of falsifying patients' records to support his recommendations to them for unnecessary cataract surgeries constitutes unprofessional conduct under 26 V.S.A. § 1354 (a)(8).

Count CXXXI-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

460. The State hereby incorporates the allegations in Paragraphs 1-459, above.

461. Respondent's pattern and practice of recommending to patients on two or more occasions that they undergo unnecessary cataract surgeries constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXXXII -Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

462. The State hereby incorporates the allegations in Paragraphs 1-461, above.

463. Respondent's pattern and practice of directing patients on two or more occasions not to seek a second opinion constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXXXIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

464. The State hereby incorporates the allegations in Paragraphs 1-463, above.

465. Respondent's pattern and practice of falsifying patient records on two or more occasions to support his recommendations to them for unnecessary cataract surgeries constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count CXXXIV-Consistent Improper Utilization of Services Under 26 V.S.A. §1354(a)(18)

466. The State hereby incorporates the allegations in Paragraphs 1-465, above.

467. Respondent's pattern and practice of improper use of CST with BAT to measure visual acuity on two or more occasions constitutes consistent improper utilization of services under 26 V.S.A. §1354(a)(18)

Count CXXXV-Consistent use of Non-accepted Procedures Which Have a Consistent Detrimental Effect Upon Patients Under 26 V.S.A. §1354(a)(19)

468. The State hereby incorporates the allegations in Paragraphs 1-467, above.

469. Respondent's pattern and practice of improper use of CST with BAT to measure visual acuity on two or more occasions to support his recommendations to patients that they undergo unnecessary cataract surgeries constitutes consistent use of non-accepted procedures which have a consistent detrimental effect upon patients under 26 V.S.A. §1354(a)(19).

Count CXXXVI -Failure to Use and Exercise on Repeated Occasions, that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a) (22)

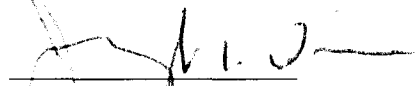
470. The State hereby incorporates the allegations in Paragraphs 1-469, above.

471. Respondent's conduct as alleged above constitutes failure to use and exercise on repeated occasions that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354 (a) (22).

WHEREFORE, the State of Vermont moves the Board to **REVOKE** Respondent's license to practice medicine.

Dated at Montpelier, Vermont this 1st day of December, 2003.

**WILLIAM SORRELL
ATTORNEY GENERAL
STATE OF VERMONT
BY**



Joseph L. Winn

Charges filed:

Margaret Martin
Secretary

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609